

### III. REMARKS

1. The finality of the instant Office Action is not proper and premature because Korpela (U.S. Patent No. 6,311,055) is disqualified as a reference for purposes of U.S.C. §103(a). An Office Action cannot be made "final" when a statement averring common ownership is made to disqualify a patent in a rejection under 35 U.S.C. §103(a), and the claims are not amended. "When applying any 35 U.S.C. 102(e)/103 references against the claims of an application the Examiner should anticipate that a statement averring common ownership at the time the inventors was made may disqualify any patent or application applied in a rejection under U.S.C. 103 based on 35 U.S.C. 102(e). If such a statement is filed in reply to the 35 U.S.C. 102(e)/103 rejection and the claims are not amended, the examiner may not make the next Office action final if a new rejection is made. See MPEP §706.02(I)(3)." MPEP §706.07(a).


In the Response filed on April 7, 2006 the Applicant did not amend any claims. The Applicant also clearly set forth the statement of common ownership of Korpela, pursuant to the requirements of 35 U.S.C. §103(c). (See page 13, numbered paragraph 2, of Response Filed April 7, 2006).

Therefore, pursuant to MPEP §706.07(a), since the statement averring common ownership was filed, the Examiner may not make the next action final. Thus, the finality of the rejection mailed November 30, 2006 is premature and must be withdrawn. (706.07(c)). A new Office Action with a new response period should be issued. (706.07(d))

Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

  
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16 Feb 2007  
Date

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being deposited transmitted electronically, on the date indicated below, addressed to the Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: 16 February 2007

Signature: Shannon D'Amico

Shannon D'Amico  
Person Making Deposit